

## Office of Personnel Management

## § 575.102

### Subpart E—Extended Assignment Incentives

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SOURCE: 56 FR 12838, Mar. 28, 1991, unless otherwise noted.

### Subpart A—Recruitment Incentives

SOURCE: 70 FR 25740, May 13, 2005, unless otherwise noted.

#### § 575.101 Purpose.

This subpart contains regulations implementing 5 U.S.C. 5753, which authorizes payment of recruitment incentives. An agency may pay a recruitment incentive to a newly appointed

employee under the conditions specified in this subpart provided the agency has determined that the employee's position is likely to be difficult to fill in the absence of an incentive.

#### § 575.102 Definitions.

In this subpart:

*Agency* means an executive agency or a legislative branch agency included in 5 U.S.C. 5102(a)(1).

*Authorized agency official* means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

*Competencies* means the knowledge, skills, abilities, behaviors, and other characteristics an individual needs to perform the duties of a position.

*Employee* has the meaning given that term in 5 U.S.C. 2105, except that the term also includes an employee described in 5 U.S.C. 2105(c). For the purpose of determining whether an individual was an employee of the Federal Government during the 90-day period referred to in the definition of *newly appointed*, *employee* also includes an employee described in 5 U.S.C. 2105(e). For the purpose of § 575.109(d), an *employee* means an individual not yet employed who has received a written offer to be newly appointed or reappointed and has signed the written service agreement required by § 575.110 before payment of the recruitment incentive.

*Executive agency* has the meaning given that term in 5 U.S.C. 105.

*Federal Government* means all entities of the Government of the United States, including the United States Postal Service and the Postal Regulatory Commission.

*Newly appointed* refers to—

(1) The first appointment, regardless of tenure, as an employee of the Federal Government;

(2) An appointment of a former employee of the Federal Government following a break in Federal Government service of at least 90 days; or

(3) An appointment of an individual in the Federal Government when his or her service in the Federal Government during the 90-day period immediately preceding the appointment was limited to one or more of the following:

(i) A time-limited appointment in the competitive or excepted service;

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(ii) A non-permanent appointment (excluding a Schedule C appointment under 5 CFR part 213) in the competitive or excepted service;

(iii) Employment with the government of the District of Columbia (DC) when the candidate was first appointed by the DC government on or after October 1, 1987;

(iv) An appointment as an expert or consultant under 5 U.S.C. 3109 and 5 CFR part 304;

(v) Employment under a provisional appointment designated under 5 CFR 316.403; or

(vi) Employment under the Student Career Experience Program under 5 CFR 213.3202(b).

*OPM* means the Office of Personnel Management.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position to which an employee is or will be appointed before deductions and including any special rate under 5 CFR part 530, subpart C, or similar payment under other legal authority, and any locality-based comparability payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excluding additional pay of any other kind. For example, a *rate of basic pay* does not include additional pay such as night shift differentials under 5 U.S.C. 5343(f) or environmental differentials under 5 U.S.C. 5343(c)(4).

*Service agreement* means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment of not less than 6 months or more than 4 years with the agency in return for payment of a recruitment incentive.

[70 FR 25740, May 13, 2005, as amended at 72 FR 67837, Dec. 3, 2007]

## § 575.103 Eligible categories of employees.

(a) Except as provided in § 575.104, an Executive agency may pay a recruitment incentive to an employee appointed or placed in the following categories of positions:

(1) A General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority);

(2) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(4) A position as a law enforcement officer, as defined in 5 CFR 550.103;

(5) A position under the Executive Schedule paid under 5 U.S.C. 5311–5317 or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(6) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3); or

(7) Any other position in a category for which payment of recruitment incentives has been approved by OPM at the request of the head of an executive agency.

(b) Except as provided in § 575.104, a legislative agency may pay a recruitment incentive to an employee appointed or placed in a General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority).

[70 FR 25740, May 13, 2005, as amended at 72 FR 67837, Dec. 3, 2007]

## § 575.104 Ineligible categories of employees.

An agency may not pay a recruitment incentive to an employee in—

(a) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(b) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(c) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(d) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(1) To which an individual is appointed by the President without the advice and consent of the Senate;

(2) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(3) In which the employee is expected to receive an appointment as the head of an agency.

**§ 575.105 Applicability to employees.**

(a) A recruitment incentive may be paid under the conditions prescribed in this subpart to an employee who is newly appointed to a position listed in § 575.103 that is likely to be difficult to fill, as determined under § 575.106.

(b) An agency may target groups of similar positions (excluding positions covered by § 575.103(b), (c), or (e) or those in similar categories approved by OPM under § 575.103(g)) that have been difficult to fill in the past or that may be difficult to fill in the future and make the required determination to offer a recruitment incentive to newly-appointed employees on a group basis.

(c) An agency may not commence a recruitment incentive service agreement during—

(1) A period of employment established under any service agreement required for a relocation incentive under 5 CFR part 575, subpart B, or

(2) A period of employment established under any service agreement required for a retention incentive or for which an employee receives retention incentive payments without a service agreement under 5 CFR part 575, subpart C.

[70 FR 25740, May 13, 2005, as amended at 72 FR 67838, Dec. 3, 2007]

**§ 575.106 Authorizing a recruitment incentive.**

(a) *Authority of authorized agency official.* An authorized agency official retains sole and exclusive discretion, subject only to OPM review and oversight, to—

(1) Determine when a position is likely to be difficult to fill under paragraph (b) of this section;

(2) Approve a recruitment incentive for an employee under § 575.105;

(3) Establish the criteria for determining the amount of a recruitment incentive and the length of a service period under §§ 575.109(a) and 575.110(a), respectively;

(4) Request a waiver from OPM of the limitation on the maximum amount of a recruitment incentive under § 575.109(c); and

(5) Establish the criteria for terminating a service agreement under § 575.111.

(b) *Factors for determining when a position is likely to be difficult to fill.* An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may determine that a position is likely to be difficult to fill if the agency is likely to have difficulty recruiting candidates with the competencies required for the position (or group of positions) in the absence of a recruitment incentive. An agency must consider the following factors, as applicable to the case at hand, in determining whether a position (or group of positions) is likely to be difficult to fill in the absence of a recruitment incentive and in documenting this determination as required by § 575.108:

(1) The availability and quality of candidates possessing the competencies required for the position, including the success of recent efforts to recruit candidates for the position or similar positions using indicators such as offer acceptance rates, proportion of positions filled, and the length of time required to fill similar positions;

(2) The salaries typically paid outside the Federal Government for similar positions;

(3) Recent turnover in similar positions;

(4) Employment trends and labor-market factors that may affect the agency's ability to recruit candidates for similar positions;

(5) Special or unique competencies required for the position;

(6) Agency efforts to use non-pay authorities, such as special training and work scheduling flexibilities, to resolve difficulties alone or in combination with a recruitment incentive;

(7) The desirability of the duties, work or organizational environment, or geographic location of the position; and

(8) Other supporting factors.

(c) An agency may determine that a position (or group of positions) is likely to be difficult to fill if OPM has approved the use of a direct-hire authority applicable to the position (or group

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of positions) under 5 CFR part 337, subpart B.

[70 FR 25740, May 13, 2005, as amended at 72 FR 67838, Dec. 3, 2007]

### **§ 575.107 Agency recruitment incentive plan and approval levels.**

(a) Before paying recruitment incentives under this subpart, an agency must establish a recruitment incentive plan. The plan must include the following elements:

(1) The designation of officials with authority to review and approve payment of recruitment incentives (subject to paragraph (b) of this section), including the circumstances under which an official has the authority to approve payment without higher-level approval under paragraph (b)(2) of this section, and the designation of officials with authority to waive the repayment of a recruitment incentive under § 575.111(h);

(2) The categories of employees who are prohibited from receiving recruitment incentives;

(3) Required documentation for determining that a position is likely to be difficult to fill;

(4) Any requirements for determining the amount of a recruitment incentive;

(5) The payment methods that may be authorized;

(6) Requirements governing service agreements, which, at a minimum, must include—

(i) The criteria for determining the length of a service period;

(ii) The conditions for terminating a service agreement; and

(iii) The obligations of the agency and the employee, as applicable, if an agency terminates a service agreement; and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action and to fulfill the requirements of §§ 575.112 and 575.113.

(b)(1) Except as provided in paragraph (b)(2) of this section, an authorized agency official who is at least one level higher than the employee's supervisor must review and approve each determination to pay a recruitment incentive to a newly appointed employee, unless there is no official at a higher level in the agency. The authorized

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agency official must review and approve the recruitment incentive determination before the agency may pay the incentive to the employee.

(2) When necessary to make a timely offer of employment, an authorized agency official may establish criteria in advance for offering recruitment incentives to newly-appointed employees and may authorize an official who is not lower than a candidate's supervisor to use these criteria to offer a recruitment incentive (in any amount within a pre-established range) to a candidate without further review or approval.

(c) Unless the head of the agency determines otherwise, an agency recruitment incentive plan must apply uniformly across the agency.

[70 FR 25740, May 13, 2005, as amended at 72 FR 67838, Dec. 3, 2007]

### **§ 575.108 Approval criteria and written determination.**

(a) For each determination to pay a recruitment incentive under this subpart, an agency must document in writing—

(1) The basis for determining that a position is likely to be difficult to fill, as determined under § 575.106;

(2) The basis for authorizing a recruitment incentive; and

(3) The basis for the amount and timing of the approved recruitment incentive payment and the length of the required service period.

(b) An agency must make the determination to pay a recruitment incentive before the prospective employee enters on duty in the position for which recruited.

### **§ 575.109 Payment of recruitment incentives.**

(a) An authorized agency official must establish the criteria for determining the amount of a recruitment incentive. An agency may pay a recruitment incentive—(1) As an initial lump-sum payment at the commencement of the service period required by the service agreement or before the start of the service period, as authorized by paragraph (d) of this section;

(2) In installments throughout the service period required by the service agreement;

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(3) As a final lump-sum payment upon the completion of the full service period required by the service agreement; or

(4) In a combination of these payment methods.

(b)(1) Except as provided in paragraph (c) of this section, the total amount of recruitment incentive payments paid to an employee in a service period may not exceed 25 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years).

(2) For hourly rate employees who do not have a scheduled annual rate of basic pay, compute the annual rate required for paragraph (b)(1) of this section by multiplying the applicable hourly rate in effect at the beginning of the service period by 2,087 hours.

(3) For the purpose of determining the number of years in a service period under paragraph (b)(1) of this section, divide the total number of calendar days in the service period by 365 and round the result to two decimal places. For example, a service period covering 39 biweekly pay periods equals 546 days, and 546 days divided by 365 days equals 1.50 years.

(c)(1) An authorized agency official may request that OPM waive the limitation in paragraph (b)(1) of this section for an employee based on a critical agency need. The authorized agency official must determine that the competencies required for the position are critical to the successful accomplishment of an important agency mission, project, or initiative (e.g., programs or projects related to a national emergency or implementing a new law or critical management initiative). Under such a waiver, the total amount of recruitment incentive payments paid to an employee in a service period may not exceed 50 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period. However, in no event may a waiver provide total recruitment incentive payments exceeding 100 percent of the

employee's annual rate of basic pay at the beginning of the service period.

(2) Waiver requests must include—

(i) A description of the critical agency need the proposed recruitment incentive would address;

(ii) The documentation required by §575.108;

(iii) The proposed recruitment incentive payment amount and a justification for that amount;

(iv) The timing and method of making the recruitment incentive payments;

(v) The service period required; and

(vi) Any other information pertinent to the case at hand.

(d) An agency may pay a recruitment incentive to an employee who has not yet entered on duty once the employee has signed a service agreement established under §575.110.

(e) A recruitment incentive is not part of an employee's rate of basic pay for any purpose.

(f) Payment of a recruitment incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

### §575.110 Service agreement requirements.

(a) Before paying a recruitment incentive, an agency must require the employee to sign a written service agreement to complete a specified period of employment with the agency (or successor agency in the event of a transfer of function). An authorized agency official must establish the criteria for determining the length of a service period. The service period may not be less than 6 months and may not exceed 4 years.

(b)(1) The service agreement must include the commencement and termination dates of the required service period. Except as provided in paragraphs (b)(2) and (b)(3) of this section, the required service period must begin upon the commencement of service with the agency. The service period must terminate on the last day of a pay period.

(2) If service with the agency does not begin on the first day of a pay period, the agency must delay the service period commencement date so that a required service period begins on the

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first day of the first pay period beginning on or after the commencement of service in the agency.

(3) An agency may delay a service agreement commencement date until after the employee completes an initial period of formal training or required probationary period when continued employment in the position is contingent on successful completion of the formal training or probationary period. The agency must make the determination to pay a recruitment incentive before the employee enters on duty in the position. However, the service agreement must specify that if an employee does not successfully complete the training or probationary period before the service period commences, the agency is not obligated to pay any portion of the recruitment incentive to the employee.

(c) The service agreement must specify the total amount of the incentive, the method of paying the incentive, and the timing and amounts of each incentive payment, as established under §575.109.

(d) The service agreement must include the conditions under which the agency must terminate the service agreement (*i.e.*, if an employee is demoted or separated for cause, receives a rating of record of less than “Fully Successful” or equivalent, or otherwise fails to fulfill the terms of the service agreement) and the conditions under which the employee must repay a recruitment incentive under §575.111.

(e) The service agreement must include the conditions under which the agency may terminate the service agreement before the employee completes the agreed-upon service period. The service agreement must specify the effect of a termination under §575.111, including the conditions under which the agency will pay an additional recruitment incentive payment for partially completed service under §575.111(e) and (f).

(f) The service agreement may include any other terms or conditions that, if violated, will result in termination of the service agreement under §575.111(b). For example, the service agreement may specify the employee’s work schedule, type of position, and the duties he or she is expected to per-

form. In addition, the service agreement may address the extent to which periods of time on detail, in a nonpay status, or in a paid leave status are creditable towards the completion of the service period.

### §575.111 Termination of a service agreement.

(a) An authorized agency official may unilaterally terminate a recruitment incentive service agreement based solely on the management needs of the agency. For example, an agency may terminate a service agreement when the employee’s position is affected by a reduction in force, when there are insufficient funds to continue the planned incentive payments, or when the agency assigns the employee to a different position (if the different position is not within the terms of the service agreement).

(b) An authorized agency official must terminate a recruitment incentive service agreement if an employee is demoted or separated for cause (*i.e.*, for unacceptable performance or conduct), if the employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than “Fully Successful” or equivalent, or if the employee otherwise fails to fulfill the terms of the service agreement.

(c) The termination of a service agreement is not grievable or appealable.

(d) The agency must notify an employee in writing when it terminates a recruitment incentive service agreement.

(e) If an authorized agency official terminates a service agreement under paragraph (a) of this section, the employee is entitled to all recruitment incentive payments that are attributable to completed service and to retain any portion of a recruitment incentive payment he or she received that is attributable to uncompleted service.

(f) Except as provided in paragraph (j) of this section, if an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain recruitment incentive payments previously paid by the agency that are

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attributable to the completed portion of the service period. If the employee received recruitment incentive payments that are less than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the recruitment incentive service agreement. If the employee received recruitment incentive payments in excess of the amount that would be attributable to the completed portion of the service period, he or she must repay the excess amount, except when an authorized agency official waives the requirement to repay the excess amount under paragraph (h) of this section.

(g) If an employee fails to reimburse the paying agency for the full amount owed under paragraph (f) of this section, the amount outstanding must be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions governing Federal debt collection if the individual is no longer a Federal employee.

(h) If an employee received recruitment incentive payments in excess of the amount that would be attributable to the completed portion of the service period under paragraph (f) of this section, an authorized agency official may waive the requirement to repay the excess amount when, in the judgment of the official, collection of the excess amount would be against equity and good conscience and not in the best interest of the United States.

(i) The full amount of the authorized recruitment incentive must be prorated across the length of the service period to determine the amount of the recruitment incentive attributable to completed service and uncompleted service under this section.

(j) Notwithstanding paragraph (f) of this section, if an agency terminates a service agreement under paragraph (b) of this section when an employee is separated as a result of material false or inaccurate statements or deception or fraud in examination or appoint-

ment, or as a result of failing to meet employment qualifications, the employee must repay all recruitment incentive payments received under that service agreement.

[70 FR 25740, May 13, 2005, as amended at 72 FR 67838, Dec. 3, 2007]

### **§575.112 Internal monitoring requirements and revocation or suspension of authority.**

(a) Each agency must monitor the use of recruitment incentives to ensure that its recruitment incentive plan and the payment of recruitment incentives are consistent with the requirements and criteria established under 5 U.S.C. 5753 and this subpart.

(b) When OPM finds that an agency is not paying recruitment incentives consistent with the agency's recruitment incentive plan and the criteria established under 5 U.S.C. 5753 and this subpart or otherwise determines that the agency is not using this authority selectively and judiciously, OPM may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component in the agency and, with respect to any category or categories of employees, require that the component obtain approval from the agency's headquarters level before paying a recruitment incentive to such employees; or

(2) Revoke or suspend the authority granted to the agency under this subpart for all or any part of the agency and, with respect to any category or categories of employees, require that the agency obtain OPM's approval before paying a recruitment incentive to such employees.

### **§575.113 Records and reports.**

(a) Each agency must keep a record of each determination to pay a recruitment incentive and make such records available for review upon OPM's request.

(b) By March 31 in each of the years 2006 through 2010, each agency must submit a written report to OPM on the use of the recruitment incentive authority within the agency during the previous calendar year for use in compiling an OPM report to Congress, as required by section 101(c) of Public Law

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(1) A description of how the authority to pay recruitment incentives was used by the agency during the previous calendar year;

(2) The number and dollar amount of recruitment incentives paid during the previous calendar year by occupational series and grade, pay level, or other pay classification; and

(3) Other information, records, reports, and data as OPM may require.

### § 575.114 Recruitment bonus service agreements in effect before May 1, 2005.

This subpart does not apply to a recruitment bonus service agreement that was authorized under 5 U.S.C. 5753 and 5 CFR part 575, subpart A, before May 1, 2005. Such service agreements remain in effect until their expiration, subject to regulations applicable to recruitment bonuses before May 1, 2005. (See 5 CFR part 575 and part 530, subpart B, contained in the 5 CFR, parts 1 to 699, edition revised as of January 1, 2005.)

## Subpart B—Relocation Incentives

SOURCE: 70 FR 25743, May 13, 2005, unless otherwise noted.

### § 575.201 Purpose.

This subpart contains regulations implementing 5 U.S.C. 5753, which authorizes payment of relocation incentives. An agency may pay a relocation incentive to a current employee who must relocate to accept a position in a different geographic area under the conditions specified in this subpart provided the agency determines that the position is likely to be difficult to fill in the absence of an incentive.

### § 575.202 Definitions.

In this subpart:

*Agency* means an executive agency or a legislative branch agency included in 5 U.S.C. 5102(a)(1).

*Authorized agency official* means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

*Competencies* means the knowledge, skills, abilities, behaviors, and other

characteristics an employee needs to perform the duties of a position.

*Employee* has the meaning given that term in 5 U.S.C. 2105, except that the term also includes an employee described in 5 U.S.C. 2105(c). For the purpose of determining whether an individual had status as an employee of the Federal Government immediately prior to the relocation (*i.e.*, in § 575.205(a)(2)), *employee* also includes an employee described in 5 U.S.C. 2105(e).

*Executive agency* has the meaning given that term in 5 U.S.C. 105.

*Federal Government* means all entities of the Government of the United States, including the United States Postal Service and the Postal Regulatory Commission.

*OPM* means the Office of Personnel Management.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position to which the employee is relocated before deductions and including any special rate under 5 CFR part 530, subpart C, or similar payment under other legal authority, and any locality-based comparability payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excluding additional pay of any other kind. For example, a *rate of basic pay* does not include additional pay such as night shift differentials under 5 U.S.C. 5343(f) or environmental differentials under 5 U.S.C. 5343(c)(4).

*Service agreement* means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment of not more than 4 years with the agency at the new duty station to which relocated in return for payment of a relocation incentive.

[70 FR 25743, May 13, 2005, as amended at 72 FR 67838, Dec. 3, 2007]

### § 575.203 Eligible categories of employees.

(a) Except as provided in § 575.204, an Executive agency may pay a relocation incentive to an employee in the following categories of positions:

(1) A General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority);